IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-07-2006

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 4844 & 11066 of 2001
and
W.P.M.P. No. 12297 & 16002 of 2001
-o-

K. Indira .. Petitioner in both the writ petitions

Versus

1. Union of India
   rep. by its Secretary
   Ministry of Petroleum and
   Natural Gas
   New Delhi

2. Hindustan Petroleum Corporation
   Limited
   No.1, Dr. Ambedkar Veedhi
   IV Floor, Indian Express Building
   Bangalore - 560 001

3. Dealer Selection Board
   Renaissance Terrace
   No.126-D, Thirugnanasambandam St
   Race Course
   Coimbatore - 624 018

4. M. Andal .. Respondents in both the Wps

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WP No. 4844 of 2001 : Petition under Article 226 of The Constitution of India praying for a Writ of Mandamus as stated therein.

WP No. 11066 of 2001 : Petition under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. S.C. Palanisamy in both the Writ Petitions

For Respondents : Mrs. Meera Gupta for R1 in both the Writ Petitions

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Mr. V. Girish Kumar for RR2 & 3
in both the Writ Petitions

Mr. P. Mani for R4 in both the
Writ Petitions

COMMON ORDER

The petitioner has filed WP No. 4844 of 2001 praying for a Writ of Mandamus forbearing the respondents 2 and 3 from issuing LPG Distributorship for HP Gas in Tharamangalam locality, Salem District in open (women) category list to the fourth respondent which was called and advertised on 28.08.2000 by the second respondent without following the usual and normal procedures.

2. The prayer in WP No. 11066 of 2001 is for a Writ of Certiorarified Mandamus to call for the records from the respondents 1 to 3 in respect of the file relating to issue of LPG Distributorship for HP Gas in Tharamangalam locality, Salem District in open (women) category list which was called and advertised on 28.08.2000 and quash the impugned order passed by the third respondent herein by order dated 22.11.2000 relating to the above said subject matter and grant the same distributorship to the petitioner herein.

3. The case of the petitioner is as follows:-

The second respondent/Petroleum Corporation, hereinafter referred to as 'corporation', has issued notification dated 19.05.1998 inviting applications for award of LPG Distributorship of HPC Gas for seven locations under various categories and the petitioner submitted her application for allotment of Distributorship under open (women) category list for Tharamangalam, Salem District. Thereafter, the corporation did not take any steps for two years and issued another notification dated 28.08.2000 and the petitioner submitted another application on 09.10.2000. According to the petitioner, she is financially sound and experienced in explosive materials as well as transport, owns lands suitable for construction of godown at Taramangalam thereby satisfied the qualifications required by the Corporation. On 01.11.2000, the third respondent sent a letter calling upon the petitioner to attend an interview on 22.11.2000 and accordingly she attended the interview and the third respondent selected the petitioner, fourth respondent and one M. Kamalakanna. Thereafter, the petitioner did not receive any communication from the third respondent, hence, she sent a letter dated 10.02.2001 requesting the third respondent to award the LPG distributorship in her favour. On 17.02.2001, the corporation sent a reply stating that the selection for the LPG dealership is completed and letter of intent was also issued to the fourth respondent. Immediately, the petitioner sent a letter on 19.12.2001 to the third respondent requesting to give the order of rejection, for which, the third respondent has sent a reply dated 28.02.2001 stating that after publication of merit list, no correspondence, whatsoever is

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entertainable. According to the petitioner, for the purpose of awarding dealership, the respondents 2 and 3 herein ought to have conducted field survey for all the candidates, but conducted only in respect of the fourth respondent ignoring the usual procedure.

4. The corporation has filed a counter affidavit denying the averments made by the petitioner as mentioned below:-

Originally, the Corporation has issued a notification on 19.05.1998 and in response to the same various applications were received, scrutinised and submitted to the third respondent for conducting interviews, however, the selection process for new dealership was kept in abeyance by the Ministry of Petroleum and Natural Gas. Again, as per the directions issued by the Ministry, notification was issued on 28.08.2000. The third respondent conducted interview and selected three candidates including the petitioner and fourth respondent and as per the directions issued by the third respondent, field investigation report in respect of the candidate placed number one in the merit panel, namely the fourth respondent, was conducted and submitted. The third respondent further directed to issue letter of intent in favour of the candidate placed number one in the merit panel, if found suitable and accordingly dealership was awarded in favour of the fourth respondent. In any event, financial soundness/capability alone not the criterion for selection and placing a candidate in No.1 in the merit panel. The field inspection is done only for the first empanelled candidate for the first instance in line with the revised dealership selection procedure formulated by the ministry. It is not incumbent for the third respondent to communicate the final result of the dealership selections to all the candidates. The third respondent found that the eligibility, status and field inspection report in respect of the fourth respondent was satisfactory, hence, issued letter of intent in favour of the fourth respondent. The corporation has followed guidelines issued by the Ministry and there is no illegality or irregularity in the selection of the fourth respondent.

5. The third respondent has filed counter stating that there is no omission or commission in the selection of the candidates as alleged by the petitioner and the selection was made in accordance with law and the guidelines issued by the Ministry of Petroleum and Natural Gas, New Delhi, periodically.

6. The selected candidate, fourth respondent has filed the counter affidavit wherein it is stated thus:-

The allegation that the petitioner is financially sound and has experience in the field of explosives and transportation and that she possess land suitable for construction of godown are all false. The averment that the petitioner is the only candidate fully qualified for the award of distributorship is untrue and misleading. The fourth respondent is fully qualified and is possessing land and show room in Tharamangalam as well as sound financial stability than that of the petitioner. The third respondent, after having satisfied with

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the eligibility and financial status of the fourth respondent has finally selected her and awarded the dealership. It is not necessary for the respondents 2 and 3 to conduct field survey in respect of all the candidates who were selected. Pursuant to the award of dealership on 10.01.2001, as required, the fourth respondent has arranged for a show room at Tharamangalam with telephone, constructed godown at a cost of Rs.2 lakhs etc., The Chief Controller of Explosives, Department of Explosives, Government of India Chennai, after satisfied with the construction of the godown issued licence in Form F for storage of LPG Cylinders under Gas Cylinder Rules, 1981. She has also obtained certificate of registration under Tamil Nadu General Sales Tax Act and the Central Sales Tax Act from 20.03.2001 under TNGST Rc. No. 3243325 and CST Rc.No.677407 respectively. The fourth respondent also deposited a sum of Rs.22,500/- with the second respondent in respect of 450 cylinders. The fourth respondent has spent huge amount towards acquiring land, construction of godown, setting up show room, acquiring transport vehicles, employing technical men, getting registration certificates, F licence from Controller of Explosives etc., but because of the injunction granted by this Court, she was put to irreparable loss and hardship and could not commence the dealership business.

7. Mr. S.C. Palanisamy, learned counsel appearing for the writ petitioner reiterated the contents of the affidavit filed in support of the writ petition and stated that the respondents 1 to 3 have failed to compare the merits and demerits of the petitioner and the fourth respondent before awarding the distributorship; that the higher merits and qualifications of the petitioner was not properly considered; the respondents 1 to 3 failed to follow the procedures and formalities before selecting the fourth respondent; that the respondents 1 to 3 failed to conduct field survey report in respect of the petitioner. The learned counsel for the petitioner highlighted the argument that the respondents 1 to 3 in their notification dated 28.08.2000 mentioned that applicant should furnish along with the application the details of land for godown with measurement, whereas, in this case, the fourth respondent has not furnished the said details. In support of this contention, the learned counsel for the petitioner relied on the decision of a Division Bench of this Court reported in (K. Vinodkumar v. I.S. Palanisamy and others) 2003 Writ Law Reporter 476, wherein in para-8 and 11 it was held thus:-

> "8. The last limb of the clause has been taken by Mr. Subramanian for his aid to contend that the land has to be offered within two months from the date of grant of distributorship, which provides that, if the selectee has not offered the land, the particulars of which had already been given within two months, the dealership granted would be cancelled. This would mean, if the selectee is not able to make available the land which has been considered more suitable on evaluation by the Corporation on the commercial point of view within two months from selection, the dealership granted in favour of the selectee would be cancelled. This exercise of consideration of the land by

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the Corporation has to be done prior to selection. Hence, the details of the land should be made known to the corporation well in advance so as to enable the corporation to evaluate prior to selection. Hence the contention contra to the same by Mr. R. Subramanian has to be rejected. Even in this clause also, there is a reference to the land, the details of which has already been furnished. Hence, a cojoint reading of the four limbs of the clause (v) would make it clear that the applicant has to furnish the details of the land along with the application.

11. Each case depends on its own facts. A close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. It is well settled that in deciding such cases, one should avoid the temptation to decide cases by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive. A single additional or different fact may make a ocean of difference between conclusions in two cases."

8. The learned counsel appearing for the corporation submitted that field inspection has been done only in respect of the first empanelled candidate namely the fourth respondent, in line with the revised dealership selection procedure formulated by the ministry and as per the directions issued by the third respondent; that as per the guidelines, if the candidate in the merit panel No.1 is not found suitable for any reason, a report has to be forwarded to the Chairman of the selection Board, so, it is crystal clear that the intention of the third respondent is to conduct field investigation only in respect of the first merit candidate; that there is no illegality or irregularity in the selection process and the corporation has complied with all the formalities before awarding the distributorship in favour of the fourth respondent. The averment that details of land for godown not furnished by the fourth respondent along with the application is concerned, the same is not mentioned in the affidavit, hence, the corporation has not been given opportunity to meet the said grounds, however, the said averment is false and prayed for dismissal of the writ petitions.

9. The learned counsel appearing for the third respondent submits that the petitioner's superior claim over others in the matter of selection is untenable; that the allegation that there was a final selection in which the fourth respondent was selected as No.1 is not substantially correct, on the other hand, there was only one selection and this was immediately after the conclusion of the interview and in this selection three candidates in the order of merit would be made on assessing the performance of the candidates who appeared for the interview and also based upon the documents filed by them; that the selection would be made by the third respondent by allotting marks to each and every candidate on their merit and the highest scorer will be the first; that as per the

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guidelines, shortlist was notified in the notice board in alphabetical order and later, as per the revised guidelines, the notification of shortlist was dropped and only the merit list in the order of merit alone is being notified in the notice board; that in any event, the selection of the fourth respondent was made in accordance with law and the guidelines issued periodically by the ministry of Petroleum and Natural Gas, New Delhi and prayed for dismissal of the writ petitions.

10. The learned counsel appearing for the fourth respondent submits that the allegation that the petitioner is financially sound and has experience in the field of explosives and transportation and that she possess land suitable for construction of godown are all false; that the fourth respondent is fully qualified and is possessing land and show room in Tharamangalam as well as sound financial stability than that of the petitioner; that the details of the same were furnished by the fourth respondent along with the application; that the third respondent, after having satisfied with the eligibility and financial status has finally selected the fourth respondent and awarded the dealership in her favour; that it is not necessary for the respondents 2 and 3 to conduct field survey in respect of all the candidates who were selected; that pursuant to the award of dealership on 10.01.2001, the fourth respondent has complied with all the statutory requirements; that the petitioner is not entitled to the relief sought for in the writ petitions and prayed for dismissal of the same.

11. The learned counsel appearing for the respondents 2 and 3 relied on the below mentioned decisions:-

(Raunaq International Ltd. v. I.V.R. Construction Ltd.,) (1999) 1 SCC 492, wherein in Para Nos. 10 and 18, the Honourable Supreme Court held thus:-

> "10. When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should

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not intervene under Article 226 in disputes between two rival tenderers.

18. A somewhat different approach may be required in the cases of award of a contract by the Government for the purchase of items for its use. Judicial review would be permissible only on the established grounds for such review including mala fides, arbitrariness or unreasonableness of the Wednesbury variety. Balance of convenience would play a major role in moulding interim relief.

12. The second respondent/corporation has issued notification dated 19.05.1998 inviting applications to grant LPG distributorship for Hindustan Petroleum Gas in Taramangalam locality, Salem District in Open (Women) Category list. After receipt of applications, selection process for new dealership was kept in abeyance by the Ministry of Petroleum and Natural Gas. Again, after clearance from the Ministry, notification was issued on 28.08.2000, applications were received and processed. The third respondent conducted interview and selected three candidates including the petitioner, in which, the fourth respondent herein was first among them. The selection process was made by allotting marks to each and every candidates on their merit and the highest scorer will be the first.

13. Considering the facts and circumstance of the case, it is not proper for this Court to go deep into the records of the Board or Corporation and to examine the validity of the rival claims upon appreciation afresh of the materials on such record and, on the basis of such re-appraisal, to decide whether the selection was properly made or not. In this context, it would be relevant to look into the decision of a Division Bench of the Calcutta High Court reported in (Chinmoy Sarkar and etc., vs. Md. Shaniat Hossain and etc.,) AIR 1990 Calcutta 412 wherein in para-4 it was held thus:-

"4. Now, it must be pointed out at the outset that this Court in Writ Jurisdiction cannot sit in appeal over the selection of a Dealer for a Retail Outlet made by the Board. True, the Corporation and the Board are amenable to the Writ Jurisdiction since they are "State" within the meaning of Article 12 and also "authority" or "person" within the meaning of Article 226, and what is involved in the selection for Retail Dealership of articles of monopoly business carried on by a wholly-owned Government Company. However, the exercise of such jurisdiction and the judicial reviewability of such selection are subject to well-known limitations. If the selection is vitiated by a arbitrary or irrational exercise of power or by malafides or is based on no materials or made on the basis of irrelevant materials or by ignoring relevant factors including eligibility, the Writ Court would and should, on proof of the relevant facts, grant an appropriate relief. However,

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it is not for the Writ Court to delve deep into the records of the Board or the Corporation and to examine the validity of the rival claims upon appreciation afresh of the materials on such record and, on the basis of such re-appraisal, to decide whether the selection was properly made and to give effect to such decision by the issue of a Writ. It cannot be overlooked in this connection that the Board, which is vested with the function of selection, is an independent entity. It is a high level body consisting of a retired High Court Judge and a retired Civil Servant. Ordinarily, there would be minimal scope for alleging malafides against such a body although it can conceivably be alleged and proved in a given case that the selection made by it is otherwise vitiated."

14. In this case, the third respondent, after considering the materials on record, personal assessment on merits, business ability, capacity etc., of the applicant has prepared a panel according to their merits, hence, judicial review would be permissible only on the established grounds like malafide, arbitrariness or unreasonableness. In this case, I do not find any such grounds. In the absence of such grounds and the fact that the Board, which is vested with the functions of selection, is an independent entity consisting of retired Judges and retired Civil Servants possessing necessary expertise and experience to perform their duty properly, there is only minimal scope for alleging malafide against such a body. As mentioned above, such elements like malafide, arbitrariness and unreasonableness were not effectively canvassed and proved by the petitioner. In this context, it would be useful to refer the decision of a Division Bench of this Court reported in (V. Chandran vs. Oil Selection Board, Tamil Nadu, Pondicherry and Andaman and Nicobar Islands, Madras and others) AIR 1996 Madras 87 wherein in para-14, it was held thus:-

"14. As already seen, the first respondent Board is a high level body consisting of a retired Judge of this Court, one retired Deputy Accountant General and former member and acting Chairman of Tamil Nadu Public Service Commission and another respectable person. The first respondent, after considering the materials on record and the personal assessment on merits, business ability, capacity etc., of the applicants, has prepared a panel according to their merits and granted the distributorship to the 4th respondent by the Letter of Indent dated 29.03.1994. The process or appreciating and weighing the various factors, materials and rival merits, is the function of the 1st respondent Board, which is having the necessary expertise and experience to perform its duties properly. In our view, there cannot therefore be any re-appreciation or re-appraisal of relevant material

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factors, relative qualifications and evaluation of the comparative merits of the candidates in a writ proceeding under Art. 226 of the Constitution of India."

15. It is to be remembered that when two parties are challenging the award of distributorship, the Court must be satisfied that there is some element of public interest involved in entertaining such petition, as mentioned in the decision of the Honourable Supreme Court reported in (*Raunaq International Ltd. v. I.V.R. Construction Ltd.,) (1999) 1 SCC 492*, cited supra. In this case, I do not find any such public interest involved.

16. An argument was advanced by the learned counsel for the petitioner surprisingly that the fourth respondent has not included the particulars of lands along with the application, which is mandatory as per the notification, but the same was not raised in the affidavit filed in support of the writ petition, as pointed out by the learned counsel for the corporation, besides, the learned counsel for the corporation denied the said averment as false. In view of the same, the argument of the learned counsel for the petitioner in that aspect is rejected.

17. The other argument of the learned counsel for the petitioner that the respondents 1 to 3 have not made field inspection in respect of the lands of the petitioner, who was in the third place in the panel is concerned, the respondents/Board have rightly replied that field inspection of the person, who is number one in the merit list is sufficient and in case, if the same is found not fit and if it is warranted, field inspection of the other candidates will be conducted, hence, the said argument of the learned counsel for the petitioner is also rejected.

18. It is seen from the records that the fourth respondent has provided lands, building and other amenities to the satisfaction of the respondents 1 to 3, which was also duly inspected by the authorities concerned, hence, this Court is of the considered view that the respondents 1 to 3 have rightly awarded the distributorship in favour of the fourth respondent and I do not find any illegality or infirmity in the same.

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19. In view of the above discussion, the writ petitions are dismissed. No costs. Consequently, connected WPMPs are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary
   Ministry of Petroleum and
    Natural Gas
   Government of India
   New Delhi

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+3ccs to Mr.S.C.Palanisamy, Advocate Sr 28262 (Both WPS)

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